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8 Attorneys for the United States of America

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,) CASE NO. 3:15-CR-582 WHO
13)
14 Plaintiff,) **UNITED STATES' SUPPLEMENTAL MOTION**
15 v.) **IN SUPPORT OF ADMISSIBILITY OF**
16) **SUMMARY TIMELINE (GOV. EXHIBIT 118)**
17 ADAM SHAFI,)
18 Defendant.)
19 _____)

20 At trial, the government offered into evidence a timeline, Government Exhibit 118, summarizing
numerous records, including financial records, travel records, phone calls, text messages, and searches
conducted on Google and Youtube. The defendant objected; the Court allowed the timeline in as a
demonstrative exhibit to be shown to the jury at trial, but did not allow it into evidence as an exhibit that
would be sent to the jury room for deliberations. The Court instructed the government to address the
issue further if it sought to have the exhibit admitted. For the reasons discussed herein, the government
maintains that the timeline is a summary and entirely admissible under Rule 1006 of the Federal Rules
of Evidence.

21 Rule 1006 provides that the “contents of voluminous writings, recordings, or photographs which
22 cannot conveniently be examined in court may be presented in the form of a chart, summary, or
23

24 U.S. MOTION TO ADMIT TIMELINE INTO EVIDENCE

1 calculation.” “The purpose of the rule is to allow the use of summaries when the documents are
 2 unmanageable or when the summaries would be useful to the judge and jury.” *United States v. Rizk*, 660
 3 F.3d 1125, 1130 (9th Cir. 2011), quoting *Davis & Cox v. Summa Corp.*, 751 F.2d 1507, 1516 (9th
 4 Cir.1985). A proponent of summary evidence must establish that the underlying materials upon which
 5 the summary is based (1) are admissible in evidence, and (2) were made available to the opposing party
 6 for inspection. *Id.*, citing *Amarel v. Connell*, 102 F.3d 1494, 1516 (9th Cir. 1996); see also *United*
 7 *States v. PG&E*, 2016 WL 3901921 (N.D.Cal., July 19, 2016). Here, the underlying materials
 8 supporting the timeline have all been disclosed to the defense as part of the discovery process. As for
 9 the admissibility of those records, the vast majority of the underlying materials were admitted into
 10 evidence today (such as voluminous Google and Youtube search histories, bank records, and travel
 11 records). In fact, offering these underlying materials may not even have been necessary – as the *Rizk*
 12 court noted, “[i]t is essential that the underlying records from which the summaries are made be
 13 admissible in evidence, and available to the opposing party for inspection, but the underlying evidence
 14 does not itself have to be admitted in evidence and presented to the jury.” *Rizk* at 1131. The only items
 15 listed on the timeline that were not admitted were text messages, and those the government intends to
 16 reoffer whenever FBI Special Agent Chris Reinke resumes his testimony. Finally, as for whether the
 17 summaries would be useful to the judge and jury, now that the final timeline has been displayed to the
 18 jury and Special Agent Reinke has testified about nearly all of the items in it, the Court is in a much
 19 better position than it was this morning to fully gauge the timeline’s usefulness. The government
 20 predicts that in the event the Court continues to allow the timeline as a demonstrative only, the jury will
 21 likely immediately ask for it when they begin deliberations, central as it is to marshaling all of the
 22 evidence in the case. Thus, in accordance with *Rizk*, it should be admitted into evidence as a Rule 1006
 23 summary.

24 The government does not believe this issue is particularly pressing, and therefore does not need
 25 to be addressed at 7:30 tomorrow morning; however, it should be resolved by the time the government
 26 rests its case, which will likely be sometime tomorrow or Tuesday, depending on the length of cross-

1 examination.

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5 DATED: August 30, 2018

Respectfully submitted,

ALEX G. TSE
United States Attorney

6 _____ /s/
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